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July 26, 2017

Amber Koski
Assistant Field Manager
Bureau of Land Management
Green River District – Price Field Office
125 South 600 West
Price, Utah 84501

RE: Determination of No Adverse Effect for the Bureau of Land Management Price Field Office
December 2017 Oil and Gas Lease Sale

For future correspondence, please reference Case No. 17-1200

Dear Ms. Koski:

It is clear from the report provided by the Price Field Office of the BLM that the agency completed what the UT-SHPO acknowledges is a reasonable and good faith effort (pursuant to 36CFR800.4(b)(1)) to take into account the potential effect of their actions on historic properties. Thorough historical and archaeological analysis, supplemental inventory, and acquisition of site location data from URARA have contributed to a better understanding of the potential effects of leasing and fulfills the BLM's responsibilities under 36CFR800.4(a)(2) for this undertaking. It is the position of the UT-SHPO that in the case of the Price Field Office Mineral Leasing, December 2017, the BLM's determination of "No Adverse Effect" is appropriate and we concur with that finding of effect. We base this concurrence on our understanding of "reasonably foreseeable" effects under pertinent federal laws, the continuing authority of the BLM to regulate leasee's actions on federal land after a lease is granted, and the historically low probability that any future oil and gas development on lease parcels will result in adverse effects to historic properties.

The UT-SHPO agrees that the BLM has considered "reasonably foreseeable" effects as mandated under 36CFR800.5(a)(1). According to the regulations, "reasonably foreseeable" is defined in the National Historic Preservation Act using the same language found in the National Environmental Policy Act (NEPA). The UT-SHPO finds that mineral leasing, with all

appropriate analyses, does not include specific actions that would be reasonably foreseeable. Two court cases have upheld the position of speculative versus reasonably foreseeable, specifically *Wilderness Workshop v. U.S. Bureau of Land Management*, 531 F.3d 1220, 1229 (10th Cir. 2008) and *Northwest Bypass Group v. U.S. Army Corps of Engineers*, 552 F.Supp.2d 97, 126 (D. N.H. 2008). In both cases, the courts sided with the Agency and found that their permitted action (for a natural gas pipeline and a wetland permit, respectively) did not create reasonably foreseeable effects.

If the overarching intent is to complete a good faith effort to take into account the effects of an agency's proposed actions on a historic property pursuant only to 36CFR800.4(b)(1) for leasing, the UT-SHPO sees no other option but to concur with the determination of "No Adverse Effect."

Lease sales in general represent a unique kind of undertaking in which the BLM, UT-SHPO, or consulting parties have no specific knowledge on how, or even if, the lease parcels would be developed (numbers and types of wells or access roads), from where the minerals would be accessed, or on the potential effects of those actions. Given the type of minerals being leased and their geographic location, future development may include any number of well and drilling types, road or pipeline accesses, and other factors that are too speculative to consider for a specific effects determinations. As described in the BLM's consultation, those specific development actions would be handled under individual Section 106 consultations on a project by project basis, in which specific applications and proposals are being made, and the actual effects can be more clearly understood.

Over and above the implementation of future Section 106 reviews related to specific undertakings, under the lease agreement the Price Field Office retains the right to control the actions of the leasee on lease parcels.

Perhaps the most important part of the BLM's documentation is the fact that the Price Field Office may use lease stipulations to control how any development would occur. Specifically, on pg. 22 of the Lohman and Thomas report, there is clear mention that BLM has the authority through these stipulations to "deny activities all together if cultural resources issues cannot be resolved". Strong stipulations like this and their clear application preclude future activities from having an adverse effect. Further, the BLM could pull the lease from the lease-holder for any issues related to cultural resources. These stipulations further support that there is no reasonably foreseeable adverse effects from this undertaking, again suggesting "No Adverse Effect" is appropriate.

This continuing authority of the BLM over the actions of leasee's within lease parcels further assures the UT-SHPO that historic properties are unlikely to suffer adverse effects as a result of leasing.

As a final point: in the experience of the UT-SHPO oil and gas development in Utah has led to relatively few adverse effects. Since 1997 the UT-SHPO has reviewed over 400 adverse effect determinations from dozens of agencies. During this period, the UT-SHPO has not concurred with any adverse effect calls for oil and gas *leasing* activity, and only five from specific federal

oil and gas *development* projects (excluding transmission pipelines). Oil and gas development represents less than 1.5% of all adverse effects determined in the last 20 years. This figure includes the development-focused West Tavaputs and Berry Petroleum Programmatic Agreements that have been important for the understanding, protection, and interpretation of cultural resources. In this same period there are records of 9,533 oil and gas wells developed on federal lands, which is illustrative that even with an impressive number of wells and other improvements (roads, staging areas, etc.) the number of adverse effects from development are dramatically low (less than 0.01%).

To put these numbers into perspective, over 1 million acres of federal, state, tribal and private lands have been archaeologically inventoried and nearly 14,000 archaeological sites have been documented within Utah's oil fields, as defined by the Division of Oil, Gas, and Mining. With these significant numbers of sites and acres inventoried, the incredibly low number of adverse effects to historic properties is equally notable.

Most of this survey has resulted from the development phase of oil and gas mining, not at the leasing phase, thus further demonstrating that oil and gas leasing does not constitute a reasonably foreseeable adverse effect by itself.

Finally, the UT-SHPO applauds the Price Field Office in the thoroughness of their report and the efforts to address consulting party concerns. This report and analysis should be a model for other Field Offices in Utah in regards to future oil and gas leasing.

If you have questions, please contact me at 801-245-7263 or cmerritt@utah.gov.

Sincerely,



Chris Merritt, Ph.D.
Deputy State Historic Preservation Officer
Archaeology

c: P. Bradford Westwood, Utah State Historic Preservation Officer